

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 919
Criminal Law – Felony First-Degree Murder – Limitation and
Review of Conviction
DATE: February 26, 2020
(3/10)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 919. Senate Bill 919 would authorize a person previously convicted of murder in the first degree under Criminal Law §2-201(a)(4) who was not a principal in the first degree to apply for review of the conviction at any time while incarcerated or under supervision. On application for review of conviction, the court shall notify the state’s attorney of the application and hold a hearing to determine whether the applicant could be found guilty of murder under the new narrowed formulation of murder in the first degree. If the court does not find beyond a reasonable doubt that the applicant could be found guilty of murder in the first degree, the court may vacate the conviction, resentence, grant a new trial, or correct the sentence. Senate Bill 919 would also establish a Task Force to Study Felony Murder for Principals in the First Degree.

At Criminal Law Article, § 2-201(d)(1)-(2), the bill effectively requires a re-trial by a court of a jury’s findings to determine whether a defendant convicted of first-degree felony murder on or before September 30, 2020 could be found guilty of murder in the first degree after September 30, 2020. This places courts in the position of making findings of guilt for first-degree murder which is a task appropriately left to juries.

The bill also provides that if the court does not find beyond a reasonable doubt that the applicant could be found guilty, the court may vacate the conviction. This language is confusing and unworkable as it requires the court to find beyond a reasonable doubt that a possibility may exist.

Also, at § 2-201(d)(4), the bill requires courts to notify the State’s Attorneys’ offices when applications for review of convictions are filed by persons convicted of felony-murder, a notice more appropriately left to the applicant.

In addition, this bill creates a task force. Among its proposed members is the chair of the Conference of Circuit judges or designee. While the Maryland Judicial Conference appreciates the Judiciary's consideration in the formation of this task force, membership of judges on such bodies can raise separation of powers and dual office issues.

Participation by judges in extra-judicial activities, such as statutorily created workgroups, commissions, and task forces, is limited by Rule 3.4 of the Code of Judicial Conduct and by Article 8 of the Maryland Declaration of Rights. To ensure uniformity in the administration of justice throughout the state, judges are advised not to participate in the policy development functions of the Judiciary's executive and legislative partners. While the Judiciary always makes itself available for questions on a case by case basis, the Judiciary respectfully requests not to be included on this task force.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor